IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2543 OF 2005

The Director/Manager,)
M/s. Jalan Dyeing & Bleaching Mills)
95, Ganpatrao Kadam Marg,)
Lower Parel, Mumai - 13) ....Petitioner.

V/s

1. Shridhar Krishna More)
Samarth Chawl, Room No.9,)
Ram Joshi Marg, Bhattwadi,)
Ghatkopar (W), Mumbai - 84)
)
2. Hon'ble Presiding Officer,)
IXth Labour Court, Mumbai.) ....Respondents.

Mr. Rahul Nerlekar for the Petitioner.

Mr. Vinod Shetty for Respondent No.1.

CORAM: V.M. KANADE, J.
DATE : 15th June, 2007

ORAL JUDGMENT:

1. Heard the learned Counsel for the Petitioner and the learned Counsel for Respondent No.1.

2. Petitioner is challenging the order passed by the Industrial Court in an application under section 78 & 79 of

Bombay Industrial Relations Act, 1946, whereby the the Industrial Court directed the Petitioner to pay full back wages with attendant benefits for the period from 01/02/2000 to 31/12/2002 to Respondent No.1 herein.

FACTS:

3. Brief facts which are relevant for the purpose of deciding this Petition are as under:-

4. Respondent No.1 was working with the Petitioner herein from 01/01/1988. He was, however, not allowed to report on duty on 01/02/2000 on the ground that he has attained the age of superannuation. He filed an application before the Labour Court, alleging that he has been illegally retired. He claimed reinstatement with back wages and continuity of service from 01/02/2000.

5. Petitioner herein opposed the claim of Respondent No.1. Petitioner, however, alleged that Respondent No.1 was a badli worker. The Labour Court rejected the application of Respondent No.1 and, therefore, the said order was

challenged before the Industrial Court. The Industrial Court set aside the order of the Labour Court by passing the impugned order.

SUBMISSIONS:

6. The learned Counsel appearing on behalf of the Petitioner submitted that Respondent No.1 was a badli employee and he was given work as per availability of work in different departments. It is the case of the Petitioner herein in their Written Statement that the Respondent No.1 did not approach the Management for badli work after 01/02/2000 and instead of reporting for badli work, he sent a letter dated 021/02/2000 alleging illegal termination of his services by the Petitioner herein.

7. Respondent No.1, on the other hand, filed an application in which he alleged that he is a permanent worker and was working as helper since 01/01/1988. He alleged that he was not allowed to report to work on the ground that he had attained the age of superannuation. He, therefore, produced his date of birth as per E.S.I.C. record. The learned Counsel appearing on behalf of the Petitioner

invited my attention to the evidence on record and submitted that Respondent No.1 had admitted that he was paid wages only for the days that he worked and that he had not received any letter making him permanent. The learned Counsel for the Petitioner also invited my attention to the admission of Respondent No.1 in cross-examination wherein it is admitted that whenever work was available, Company used to allow him to work and if the work was not available, he used to go home. He further invited my attention to the statement of Respondent No.1 in cross-examination wherein he has admitted that, he has no document to show that the Company had retired him from services. He also pointed out that, in cross-examination, Respondent No.1 admitted that he did not make any attempt for reemployment and that his son was maintaining him. It is submitted that the Labour Court has correctly appreciated the evidence on record and had dismissed the application filed by Respondent No.1 herein. He submitted that the Industrial Court, however, had erred in interfering with the order passed by the Labour Court. He further submitted that the Industrial Court has erred in putting the burden on the Petitioner and drawing

adverse inference on account of non-production of the register of badli workers and other record. He further submitted that the Industrial Court further, in an ad-hoc manner, granted full back wages to Respondent No.1 without giving any reasons. He submitted that the Industrial Court has not taken into consideration admission of Respondent No.1 that he worked only when work was available. He submitted that, therefore, it was incumbent on the part of the Industrial Court to have taken out average pay which was paid to Respondent No.1 in one year and, on that basis, it could have awarded him back wages. He relied upon the judgment of Gujarat High Court in the case of Executive Engineer, Panchayat (R & B) Division Vs. Punabhai Govindbhai reported in **1994 I CLR 64.** He also relied upon the judgment of the Apex Court in the case of U.P. State Brassware Corpn. Ltd. & Anr. Vs. Udai Narain Pandey, reported in **2006 I CLR 39** and the judgment of the learned Single Judge of this Court in the case of Navin J. Surti Vs. Modi Rubber Ltd. & Anr reported in **2004 II CLR 46**.

8. The learned Counsel appearing on behalf of Respondent

No.1, on the other hand, submitted that the Petitioner had changed its stand and, for the first time, argued a totally new case in this Court. He submitted that in the Written Statement, Petitioner alleged that Respondent No.1 had not reported on duty after 1/02/2000 and it was their case that the services of Respondent No.1 were never terminated.

FINDNGS AND CONCLUSION:

9. After having perused the impugned order, I do not see any reason to interfere with the said order. The Industrial Tribunal has given cogent reasons for arriving at the conclusion and finding that the Respondent No.1 was entitled to be in the employment till the date of his superannuation and since the Petitioner had not allowed him to report on duty, he was entitled to get back wages. There cannot be any dispute with regard to the ratio laid down by the various Courts in their judgments on which reliance has been placed by the learned Counsel for the Petitioner. However, ratio of the said judgments is not applicable to the facts of the present case. In fact, the Supreme Court in the

case of U.P. State Brassware Corpn. Ltd. & Anr. (supra) has held that there cannot be any strait jacket formula for the purpose of calculating back wages. In the present case, Respondent No.1 worked with the Petitioner from 1988 and in February, 2000 he was not allowed to report on duty. It is no doubt true that Respondent No.1 did not make any attempt to seek alternative employment. It has to be borne in mind that even, according to the Petitioner herein, Respondent No.1 had attained the age of 60 years in 2000. It is difficult at this age to find alternative employment. Therefore, merely because Respondent No.1 did not take any steps to seek alternative employment, that circumstance cannot be used adversely against him for the purpose of denying back wages. On the contrary, Petitioner had illegally restrained Respondent No.1 from reporting to work and, as a result, though he was entitled to get his wages, he was denied the wages on account of the action which was taken by the Petitioner herein. Under these circumstances, I do not see any reason to interfere in the order giving full back wages by the Industrial Court to Respondent No.1. Even otherwise, back wages are only for the period of three

years and the total amount which is payable to Respondent No.1, in any case, would not be more than the figure which is calculated by Respondent No.1 and stated in his affidavit-in-reply which is about Rs 1,79,000/- (approximately) plus other benefits of gratuity etc. This is another reason why I do not wish to interfere with the said order.

10. Petition is accordingly dismissed. Rule is discharged. Under the circumstances, there shall be no order as to costs.

(V. M. KANADE, J.)